

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-0687V

UNPUBLISHED

JUDITH MARKEY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 5, 2020

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Pneumococcal Conjugate Vaccine;
Shoulder Injury Related to Vaccine
Administration (SIRVA)

Ronald Craig Homer, Conway, Homer, P.C., Boston, MA, for petitioner.

Darryl R. Wishard, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On May 8, 2019, Judith Markey filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of a pneumococcal conjugate (“Pprevnar 13”) vaccination administered on July 21, 2017. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On October 21, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On September 30, 2020, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$65,000.00 for pain and suffering damages. Proffer at 1. In the Proffer, Respondent represented that

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$65,000.00 (for pain and suffering) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

JUDITH MARKEY,)	
)	
)	
Petitioner,)	No. 19-687V ECF
)	
v.)	Chief Special Master Corcoran
)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On May 8, 2019, Judith Markey (“petitioner”) filed a petition for compensation (“petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34, *as amended*. She alleges that, after receiving the Prevnar-13 vaccine on July 21, 2017, she suffered from a left shoulder injury related to vaccine administration (“SIRVA”). Petition at 1. On July 20, 2020, respondent filed his Vaccine Rule 4(c) report, conceding a Table injury for SIRVA. On July 21, 2020, Chief Special Master Corcoran issued a ruling on entitlement, finding that petitioner was entitled to compensation for SIRVA.

II. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded a lump sum of **\$65,000.00** for pain and suffering damages. This amount represents all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

¹ This Proffer does not include attorneys’ fees and costs, which the parties intend to address after the Damages Decision is issued.

III. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of **\$65,000.00**, in the form of a check payable to petitioner.²

Petitioner agrees.

Respectfully submitted,

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/s/Darryl R. Wishard
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Dated: September 30, 2020

² Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.